RECENT DECISIONS

ADMIRALTY—MARITIME TORT—STATE WRONGFUL DEATH ACT.—A statute of Maine, Rev. Stat. (1916) c. 92 §§ 9, 10, created a right of recovery for a death resulting from an "act, neglect or default . . . such as would, if death had not ensued, have entitled the party injured to maintain an action . . ." The libelant brings a libel *in personam* for the death due to negligence of his intestate while employed on a steamship in Portland Harbor. *Held,* the state statute creates a maritime right enforceable in the federal admiralty court. *Earles* v. *Howard* (D. C. D. Me. 1920) 268 Fed. 94.

This case throws into sharp relief the distinction brought about by the decision in *Knickerbocker Ice Co.* v. *Stewart* (1920) 40 Sup. Ct. 438; see (1920) 20 COLUMBIA LAW REV. 685. The representative of a maritime worker killed by negligence may recover in admiralty under a State Wrongful Death Act. *Sherlock* v. *Alling, Admin.* (1876) 93 U. S. 99. But under the *Stewart* case, the representative of a maritime worker killed by accidental means may not recover in admiralty under a State Workmen's Compensation Law. The Supreme Court reached this result originally upon the procedural ground that a Compensation Law was not a "common law remedy, where the common law is competent to give it," such as to be saved to suitors in admiralty by the Judicial Code §§ 24, 256. *Southern Pacific Co.* v. *Jensen* (1917) 244 U. S. 205, 37 Sup. Ct. 524; see (1917) 17 COLUMBIA LAW REV. 703. An attempt to overcome this decision by legislation, (1917) 40 Stat. 395, U. S. Comp. Stat. (1919) §§ 991, 1233, was declared unconstitutional in the *Stewart* case, chiefly because it destroyed the uniformity of maritime law contemplated by the grant of power in the Constitution. The established line of cases which the present decision follows is treated on the other hand, as falling within the "saving clause," although the Wrongful Death Acts were not known to the common law. *The City of Norwalk* (D. C. 1893) 55 Fed. 98; see *The Hamilton* (1907) 207 U. S. 398, 28 Sup. Ct. 133. But the artificiality of the distinction is measured by the inequity of the result.

BILLS AND NOTES—CONDITIONAL DELIVERY—PAROL EVIDENCE.—The plaintiff, payee of a note, sues the defendant indorser. The note was given in renewal of a note executed by the X Co. and signed by the defendant and other stockholders as irregular indorsers. The defendant contended, *inter alia*: (1) that the note was delivered to the plaintiff but was not to become binding unless and until the plaintiff procured W to indorse it; (2) that the note was not to become binding unless and until the plaintiff himself indorsed it. *Held,* for the plaintiff on a directed verdict. *Tross* v. *Bills' Ex'x* (Ky. 1920) 224 S. W. 660.

The decision of the court rests upon the sole ground that the answer discloses no defense for the reason that evidence to support it is inadmissible under the parol evidence rule. But extrinsic evidence may always be introduced in an action between the immediate parties to show that no obligation ever arose, *Niblock* v. *Sprague* (1911) 200 N. Y. 390, 93 N. E. 1105; or that the obligation has been discharged, N. I. L. §§ 119, 120. Such evidence is not excluded since the parol evidence rule applies only where there is a valid subsisting obligation. While it is true that the second defense annexes a rather absurd condition to the inception of an obligation, for the plaintiff could never become obligated to himself, such a condition, like any other condition precedent, in form is effective and must be complied with. *Cf. De Sonora* v. *Casualty Co.* (1904) 124 Iowa 576, 100 N. W. 532.

The law is well settled that the parol evidence rule is not violated by evidence supporting the defendant's contentions. The decision in the instant case is clearly wrong. N. I. L. § 16; *Seattle National Bank* v. *Becker* (1913) 74 Wash. 431, 133 Pac. 613; *Niblock* v. *Sprague, supra; contra, Clanin* v. *Esterly Harvesting Mach. Co.* (1889) 118 Ind. 372, 21 N. E. 35.

BILLS AND NOTES—POWER OF REMITTER TO INDORSE IN NAME OF FICTITIOUS PAYEE.—The purchasing remitter of a draft which the drawer-drawee did not know to be payable to the order of a fictitious person, indorsed in the name of the fictitious payee, and delivered the draft to the defendant, a bona fide purchaser. Upon discovering that the remitter had paid with worthless checks, the drawer-drawee sued to recover the amount of the draft which was paid the defendant. *Held*, for the plaintiff. *American Exp. Co.* v. *People's Sav. Bk.* (Iowa 1921) 181 N. W. 701.

Under the Negotiable Instruments Law an instrument payable to the order of a fictitious person is not payable to bearer when the drawer does not know of the fictitious character of the payee. N. I. L. § 9; see *Seaboard Nat. Bk.* v. *Bank of America* (1908) 193 N. Y. 26, 35, 85 N. E. 829; *Boles* v. *Harding* (1909) 201 Mass. 103, 107, 87 N. E. 481. Not being a bearer instrument, indorsement is necessary for its negotiation. N. I. L. § 30. The signing of a fictitious name with intent to defraud is forgery. *Harmon* v. *Old Detroit Nat. Bk.* (1908) 153 Mich. 73, 116 N. W. 617. Title to an instrument cannot be acquired through an unauthorized indorsement. N. I. L. § 23; *Standard Steam Spec. Co.* v. *Corn Ex. Bk.* (1917) 220 N. Y 478, 116 N. E. 386. The only method of reaching a different conclusion is to conceive that the remitter assumed the fictitious name for the purposes of the transaction. It may be urged that this would lead to a more equitable result since the remitter is the real party in interest. He can sue the drawer on the draft, and can assign his claim as a common law chose in action. See (1920) 20 COLUMBIA LAW REV. 755. The identity of the payee is immaterial to the drawer. He intended the instrument to be transferred by the remitter free of prior equities, and the way to effectuate this intention is to give the remitter a power to negotiate by indorsing in the fictitious name.

BILLS AND NOTES—STATUTES—HOLDER IN DUE COURSE.—A statute, Utah, Comp. Laws (1917) §947, provided that "Every contract . . . entered into [by a foreign corporation failing to comply with certain statutory requirements] shall be wholly void on behalf of such corporation and its assignees and every person deriving any interest or title therefrom . . ." The defendant executed and delivered a negotiable promissory note endorsed in blank to such a corporation, which transferred it by indorsement to the plaintiff, a holder in due course. *Held*, the maker was not liable. *First Natl. Bank of Price* v. *Parker* (Utah 1920) 194 Pac. 661.

Under the Uniform Negotiable Instruments Law, §§ 57 and 60, a holder in due course may recover irrespective of whether or not the payee may sue upon the note. *First Natl. Bank.* v. *Utterback* (1917) 177 Ky. 76, 197 S. W. 534; *Edwards* v. *Hambly Fruit Co.* (1915) 133 Tenn. 142, 180 S. W. 163; *McMann* v. *Walker* (1903) 31 Colo. 261, 72 Pac. 1055. Similarly, under a statute providing that contracts are void on behalf of any foreign corporation failing to register, and also on behalf of its assignees, a note is valid in the hands of an innocent indorsee for value. *Commercial Natl. Bank* v. *Bank of Jordan* (1916) 71 Fla. 566, 71 So. 760; *Natl. Bank of Commerce* v. *Pick* (1904) 13 N. Dak. 74, 99 N. W. 63. Even where a statute provided that all contracts with such a corporation should be null and void, the court pro tanto nullified it by holding the maker liable to a holder in due course. *Citizens Natl. Bank.* v. *Buckheit* (1916) 14 Ala. App. 511, 71 So. 82; but see *Jones* v. *Martin*